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U.S. DISTRICT COURT

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Attorney for the Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK

Kwabena ADJEI;
Mary ADJEI;
Eunice ADJEI;
Abigail ADJEI;
Isaac ADJEI;
Richard ADJEI;

Plaintiffs,

vs.

MICHAEL B. MUKASEY, Attorney
General of the United States;
MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security;
JOHN E. THOMPSON, District Director
for U.S. Citizenship &
Immigration Services, Newark
District Office;
EVELYN UPCHURCH, District Director of
the Texas Service Center;
ROBERT MUELLER, Director of the Federal
Bureau of Investigations;

United States Department of Justice;
United States Department of Homeland Security;
United States Citizenship & Immigration Services;
Federal Bureau of Investigation;

Case No. 08-832(SRC)

COMPLAINT FOR WRIT IN
THE NATURE OF A MANDAMUS
TO COMPEL ADMINISTRATIVE
ACTION

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Defendants.

**PLAINTIFF'S ORIGINAL COMPLAINT
FOR WRIT IN THE NATURE OF
MANDAMUS**

COME NOW Kwabena Adjei, Mary Adjei, Eunice Adjei, Richard Adjei, Isaac Adjei and Abigail Adjei, Plaintiffs in the above-styled and numbered cause, and for cause of action would show unto the Court the following:

1. This action is brought against the Defendants to compel action on an application for lawful permanent resident status properly filed by the Plaintiffs. The applications were filed and remain within the jurisdiction of the Defendants, who have improperly withheld action on said applications to Plaintiffs' detriment.

PARTIES

2. Plaintiff Kwabena is a fifty-three (53) year old native and citizen of Ghana. Kwabena last entered with a "L-1A" visa. Since his arrival, Plaintiff has been lawfully employed by Amenfi Development, LLC. He was initially authorized employment under the terms of his nonimmigrant visa status. Upon filing for lawful permanent resident status in 2005, he has been employed as authorized by the federal regulation. 8 CFR section 274a.12 (c)(9). In the course of his employment, Plaintiff is frequently required to travel internationally.
3. Plaintiff Mary Adjei is a fifty (50) year old native and citizen of Ghana. She is the wife of Kwabena. She entered the United States as his derivative spouse and, accordingly, is entitled to seek lawful permanent resident status as "accompanying" her husband, pursuant to INA section 203 (d). 8 USC section 1153(d). In fact, Mary Adjei applied for lawful permanent resident status with her husband; however, she was granted such status before her husband, the primary beneficiary; In June 2007,

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Mary was placed in removal proceedings since USCIS erroneously granted her application prior to approving her husband's application.

4. Plaintiff Eunice Adjei is a twenty-three (23) year old native and citizen of Ghana. She is the daughter of Kwabena. She entered the United States as his derivative child and, accordingly, is entitled to seek lawful permanent resident status as an "accompanying" child, pursuant to INA section 203 (d). 8 USC section 1153(d).
5. Plaintiff Richard Adjei is a twenty (20) year old native and citizen of Ghana. He is the son of Kwabena. He entered the United States as his derivative child and, accordingly, is entitled to seek lawful permanent resident status as an "accompanying" child, pursuant to INA section 203 (d). 8 USC section 1153(d).
6. Plaintiff Isaac Adjei is an eighteen (18) year old native and citizen of Ghana. He is the son of Kwabena. He entered the United States as his derivative child and, accordingly, is entitled to seek lawful permanent resident status as an "accompanying" child, pursuant to INA section 203 (d). 8 USC section 1153(d).
7. Plaintiff Abigail Adjei is a sixteen (16) year old native and citizen of Ghana. She is the daughter of Kwabena. She entered the United States as his derivative child and, accordingly, is entitled to seek lawful permanent resident status as an "accompanying" child, pursuant to INA section 203 (d). 8 USC section 1153(d).
8. Defendant Michael B. Mukasey is Attorney General of the United States, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department of Justice. 8 USC section 1103(a). More specifically, the Attorney General is responsible for the adjudication of applications for adjustment of status filed pursuant to section 245 of the Immigration and Nationality Act, 8 USC section 1255. The U.S. Citizenship and Immigration Service is an agency within the Department of

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Justice to whom the Attorney General's authority has in part been delegated, and is subject to the Attorney General's supervision.

9. Defendants District Directors John E. Thompson and Evelyn Upchurch are officials of the U.S. Citizenship and Immigration Service in Newark, New Jersey and the Texas Service Center, respectfully. They are generally charged with supervisory authority over all operations of the CIS within his or her district with certain specific exceptions not relevant here. 8 CFR section 103.1(g)(2)(ii)(B). As will be shown, Defendants District Directors are the officials with whom Plaintiffs' applications for lawful permanent resident status was properly filed.

JURISDICTION

10. Jurisdiction in this case is proper under 28 USC section 1331 and 1361, 5 USC section 701 *et seq.*, and 28 USC section 2201 *et seq.* Relief is requested pursuant to said statutes.

VENUE

11. Venue is proper in this court, pursuant to 28 USC section 1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant resides and where a substantial part of the events or omissions giving rise to Plaintiffs' claim occurred. More specifically, Plaintiffs' applications for lawful permanent resident status were properly filed and, to Plaintiffs' knowledge, remain pending with the Texas Service Center.

EXHAUSTION OF REMEDIES

12. Plaintiffs have exhausted their administrative remedies. Plaintiffs have, through their attorney, made numerous inquiries concerning the status of the applications to no avail.

CAUSE OF ACTION

13. After his admission as a nonimmigrant intracompany transferee, Amenfi Development LLC, decided to relocate Plaintiff to the New Jersey headquarters

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on a permanent basis. Accordingly, Amenfi Development LLC petitioned Defendant USCIS in April 2005 to classify Kwabena as a "multinational executive or manager" pursuant to INA section 203(b)(1)(C) and 204(a)(1)(D). 8 USC section 1153(b)(1)(C) and 1154(a)(1)(D). Approval of this petition is a prerequisite to the Plaintiff applying for adjustment of status to lawful permanent resident pursuant to INA section 245.

14. The petition filed by Amenfi Development LLC was in fact approved by USCIS on March 29, 2006 with a priority date of March 26, 2005.

15. All legal prerequisites having been satisfied, on May 14, 2005 Plaintiffs applied for adjustment of status to lawful permanent resident with the Vermont Service Center; this Service Center then transferred the applications to the Texas Service Center which is within the district of Defendant District Director, Evelyn Upchurch. At the time of said filing, such applications were being adjudicated by the Defendant District Director in a period of approximately six (6) months.

16. Plaintiffs' applications for adjustment of status have now remained unadjudicated for well over two (2) years.

17. Defendants have sufficient information to determine Plaintiffs' eligibility pursuant to applicable requirements. To date, said applications have not been adjudicated.

18. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonably, have delayed in and have refused to, adjudicate Plaintiffs' applications for over two (2) years, thereby depriving them of the right to a decision on their status and the peace of mind which Plaintiffs are entitled.

19. Plaintiffs have been greatly damaged by the failure of Defendants to act in

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accord with their duties under the law.

(a) Specifically, Plaintiff Kwabena Adjei is required to travel internationally in performing his duties as an executive / manager with Amenfi Development LLC. So long as his application for adjustment of status is pending, his travel is restricted by federal regulation which requires special permission to travel abroad ("advanced parole") during the pendency of such applications. 8 CFR section 245.2(a)(4). Departure without the advanced parole would be deemed abandonment of the permanent resident application. *Id.* Plaintiffs have therefore been forced to repeatedly apply – and pay – for this special travel permission, and unable to travel while said advanced parole applications have been pending. This situation operates to the great inconvenience and harassment of Plaintiffs and Kwabena's employer, Amenfi Development LLC.

(b) Plaintiffs have further been damaged in that their employment authorization is tied to their status as applicants for permanent residency, and is limited to increments not to exceed one year. 8 CFR section 274a.12(c)(9). Therefore, as in the case of the advanced parole, Plaintiffs have been forced to repeatedly apply – and pay – for extensions of employment authorization, to the continued inconvenience and harassment of Plaintiffs and Kwabena's employer, which is required by law to continually insure his work eligibility. INA section 274(a)(2), 8 USC section 1324a(a)(2).

(c) Plaintiff Mary Adjei was approved for lawful permanent resident status prior to her husband, Kwabena, who is the primary beneficiary of the visa petition; USCIS intended to rescind her status because, although it was USCIS error, Mary was not entitled to lawful status prior to her husband's case being approved. Mary, through her attorney, was able to overcome

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the intent to rescind and USCIS formally revoked their intention to rescind her status. However, shortly thereafter, Mary was placed in removal proceedings. Her case is currently pending in Immigration Court in Newark, New Jersey before Judge Garcy. This added injustice has occurred due to USCIS error in approving Mary's application before granting her husband lawful permanent resident status.

(d) Plaintiffs have further been damaged by simply being deprived of the status of lawful permanent residents during the interminable pendency of their applications.

20. The Administrative Procedure Act (APA) provides categorically that every agency "shall within a reasonable time...proceed to conclude any matter presented to it." 5 USC section 555(b). In recognition that a failure or unwarranted refusal to adjudicate should be enjoined, Congress provided in 5 USC section 706 *et. seq.* that courts may review the inaction of an agency and specifically "compel agency action unlawfully withheld or unreasonably delayed." Likewise, the court may "set aside agency action...found to be...arbitrary, capricious, and abuse of discretion...(or) contrary to constitutional right, power, privilege or immunity." 5 U.S.C. section 706 et. seq.

21. The Defendants, in violation of the Administrative Procedures Act, 5 USC section 701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiffs' applications and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiffs' case.

22. Defendants' conduct in processing Plaintiffs' applications, as described in the aforementioned allegations, is capricious and arbitrary and results in severe and unwarranted delay to Plaintiffs in conferring valuable immigration benefits. The delay so incurred is tantamount to a violation of the Administrative Procedure Act, 5 USC section 555(b) and (e), sections 702 and 706 *et. seq.* Plaintiffs have

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LIST OF ATTACHMENTS

<u>Exhibit</u>	<u>Description</u>
A	USCIS Visa Petition Approval
B	<p>Applications for adjustment of status filed by Plaintiffs (without attachments) and fee receipt showing Defendant's acceptance of the applications on:</p> <ul style="list-style-type: none">• Kwabena - May 14, 2005• Mary – approved June 5, 2006 but now in removal proceedings because she was approved before her husband, the primary beneficiary• Eunice – May 14, 2005• Abigail – August 8, 2005• Isaac – August 8, 2005• Richard – August 8, 2005



RECEIPT NUMBER EAC-05-123-53121		CASE TYPE I140 IMMIGRANT PETITION FOR ALIEN WORKER
RECEIPT DATE March 29, 2005	PRIORITY DATE March 26, 2005	PETITIONER AMENFI DEVELOPMENT LLC
NOTICE DATE March 30, 2006	PAGE 1 of 1	BENEFICIARY A098 973 282 ADJEI, KWABENA
TSUI H. YEE ESQ LAW OFFICES OF SPAR & BERNSTEIN P C 225 BROADWAY SUITE 512 NEW YORK NY 10007		Notice Type: Approval Notice Section: Multi-national Executive or Manager, Sec.203 (b) (1) (C)

The above petition has been approved. The person this petition is for will be notified separately when a decision is reached on his or her pending adjustment of status application.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

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THE UNITED STATES OF AMERICA

RECEIPT NUMBER EAC-05-164-52995		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS	
RECEIVED DATE May 14, 2005	PRIORITY DATE	APPLICANT A098 973 282 ADJEL, KWABENA	
NOTICE DATE May 20, 2005	PAGE 1 of 1		
TSUI H. YEE ESQ SPAR & BERNSTEIN P C 225 BROADWAY SUITE 512 NEW YORK NY 10007		Notice Type: Receipt Notice Amount received: \$ 385.00 Section: Adjustment as direct beneficiary of immigrant petition	

Receipt notice - If any of the above information is incorrect, call customer service immediately.

Processing time - Processing times vary by kind of case.

- You can check our current processing time for this kind of case on our website at uscis.gov.
- On our website you can also sign up to get free e-mail updates as we complete key processing steps on this case.
- Most of the time your case is pending the processing status will not change because we will be working on others filed earlier.
- We will notify you by mail when we make a decision on this case, or if we need something from you.
- If you move while this case is pending, call customer service when you move.
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If you have questions, check our website or call customer service. Please save this notice, and have it with you if you contact us about this case.

Notice to all customers with a pending I-130 petition - USCIS is now processing Form I-130, Petition for Alien Relative, as a visa number becomes available. Filing and approval of an I-130 relative petition is only the first step in helping a relative immigrate to the United States. Eligible family members must wait until there is a visa number available before they can apply for an immigrant visa or adjustment of status to a lawful permanent resident. This process will allow USCIS to concentrate resources first on cases where visas are actually available. This process should not delay the ability of one's relative to apply for an immigrant visa or adjustment of status. Refer to www.state.gov/travel <<http://www.state.gov/travel>> to determine current visa availability dates. For more information, please visit our website at www.uscis.gov or contact us at 1-800-375-5283.

Always remember to call customer service if you move while your case is pending. If you have a pending I-130 relative petition, also call customer service if you should decide to withdraw your petition or if you become a U.S. citizen.

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DATE: 12-10-2007 BY: COURT STAFF
Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other

THE UNITED STATES OF AMERICA

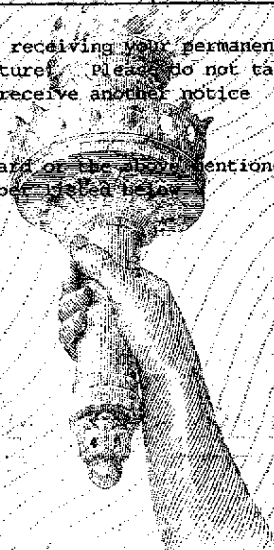
RECEIPT NUMBER EAC-05-164-53021		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIPT DATE May 20, 2005	PRIORITY DATE March 26, 2005	APPLICANT A98 973 283 ADJEI, MARY
NOTICE DATE June 5, 2006	PAGE 1 of 1	

TSUI H. YEE ESQ
SPAR & BERNSTEIN P C
225 BROADWAY SUITE 512
NEW YORK NY 10007

Notice Type: Approval Notice
Section: Derivative adjustment
COA: E19

The above application has been approved. Prior to receiving your permanent resident card you may be required to report for biometrics processing (photo/fingerprint/signature). Please do not take any action at this time. If you are required to report for this processing, you will receive another notice advising you of the date, time and location to appear.

If you have not received your permanent resident card or the above mentioned notice to appear for biometrics processing within 90 days, please call this office at the number listed below.



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RECEIPT NUMBER EAC-05-164-53008		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE May 14, 2005	PRIORITY DATE	APPLICANT A98 973 284 ADJEI, EUNICE A.
NOTICE DATE May 20, 2005	PAGE 1 of 1	
TSUI H. YEE ESQ SPAR & BERNSTEIN P C 225 BROADWAY SUITE 512 NEW YORK NY 10007		Notice Type: Receipt Notice Amount received: \$ 385.00 Section: Derivative adjustment

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Notice to all customers with a pending I-130 petition - USCIS is now processing Form I-130, Petition for Alien Relative, as a visa number becomes available. Filing and approval of an I-130 relative petition is only the first step in helping a relative immigrate to the United States. Eligible family members must wait until there is a visa number available before they can apply for an immigrant visa or adjustment of status to a lawful permanent resident. This process will allow USCIS to concentrate resources first on cases where visas are actually available. This process should not delay the ability of one's relative to apply for an immigrant visa or adjustment of status. Refer to www.state.gov/travel <<http://www.state.gov/travel>> to determine current visa availability dates. For more information, please visit our website at www.uscis.gov or contact us at 1-800-375-5283.

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THE UNITED STATES OF AMERICA

RECEIPT NUMBER EAC-05-224-51019		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS	
RECEIVED DATE August 8, 2005	PRIORITY DATE	APPLICANT A99 072 878 ADJEL, ABIGAIL	
NOTICE DATE August 11, 2005	PAGE 1 of 1		
TSUI YEE RHEE ESQ SPAR & BERNSTEIN P C 225 BROADWAY SUITE 512 NEW YORK NY 10007		Notice Type: Receipt Notice Amount received: \$ 385.00 Section: Derivative adjustment	

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THE UNITED STATES OF AMERICA

RECEIPT NUMBER EAC-05-224-51038		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE August 8, 2005	PRIORITY DATE	APPLICANT A99 072 880 ADJEI, ISAAC
NOTICE DATE August 11, 2005	PAGE 1 of 1	
TSUI YEE RHEE ESQ SPAR & BERNSTEIN P C 225 BROADWAY SUITE 512 NEW YORK NY 10007		Notice Type: Receipt Notice Amount received: \$ 385.00 Section: Derivative adjustment

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RECEIPT NUMBER EAC-05-224-51002		CASE TYPE I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE August 8, 2005	PRIORITY DATE	APPLICANT A99 072 879 ADJEI, RICHARD
NOTICE DATE August 11, 2005	PAGE 1 of 1	
TSUI YEE RHEE ESQ SPAR & BERNSTEIN P C 225 BROADWAY SUITE 512 NEW YORK NY 10007		Notice Type: Receipt Notice Amount received: \$ 385.00 Section: Derivative adjustment

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